



**OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN**

**GERALD C. MANN
ATTORNEY GENERAL**

Honorable Geo. H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Mr. Sheppard:

Opinion No. 0-3589

Re: May the compensation of an additional Deputy Clerk for the Court of Civil Appeals for the Fifth Supreme Judicial District be paid out of fees of office collected by the Clerk of that court?

We have your letter of May 22, 1941, propounding for an opinion by this Department the above-captioned question. Your request is as follows:

"You will please advise me whether or not the compensation of an additional deputy may be paid out of fees of office collected by this Court, which are on deposit in the State Treasury. If this cannot be done, you will please advise whether or not the Court has the authority to retain in their possession fees sufficient to pay the salary of the additional deputy."

Section 3 of the General Provisions of the current Judiciary Appropriation Bill declares:

"All fees paid to any court for which appropriations are made herein or to any of the clerks, officers or employees of any such court, whether such fees are for official or unofficial copies of opinions, or for other services or documents, shall be deposited at the close of each month in the

General Revenue Fund of the State Treasury and shall be carried as a special account in said Fund for the court depositing same, and none of such fees shall be retained by or paid to said clerks, officers or employes. Each court employe whose salary is provided for herein, except porters, shall file with the Comptroller at the end of each month an affidavit showing that he has not retained any compensation out of any court fees or other fees received by him or the court during that month and showing that all such fees have been deposited in the State Treasury. The Comptroller shall not issue a warrant in payment of the salary of any such employe for any month unless and until the affidavit required herein has been filed for that month."

It is generally understood to be the rule that the Legislature may not by a general appropriation bill repeal or amend a general statute. It is not necessary for us to pass upon the sufficiency of this section of the appropriation bill to repeal or affect Article 1833 of the Revised Civil Statutes of 1925, which Article declares:

"Each Clerk may appoint one chief deputy. With the approval of the court he may appoint additional deputies who shall be paid out of the fees collected by the Clerk, not to exceed \$100.00 a month. Each deputy shall give bond to the Clerk for the faithful discharge of his duty."

Article 1833 has been superseded, however, in respect to the particular matter under consideration, by Senate Bill No. 431, Chapter 2 of the 46th Legislature, Regular Session, Vol. 1, p. 619, which reads as follows:

"SECTION 1. The salaries of all State officers and all State employes except those Constitutional State of-

ficers whose salaries are specifically fixed by the Constitution, shall be, for the period beginning September 1, 1939, and ending August 31, 1941, in such sums or amounts as may be provided for by the Legislature in the general appropriation bills. It is specifically declared to be one of the intents hereof that the Legislature shall also fix the amount of supplemental salaries hereafter, out of court fees and receipts, to be paid to the clerks and other employees of the Courts of Civil Appeals, the Supreme Court and the Court of Criminal Appeals.

"SEC. 2. All laws and parts of laws fixing the salaries of all State officers and employees, except those Constitutional State officers whose salaries are specifically fixed by the Constitution, are hereby specifically repealed in so far as they are in conflict with this Act. It is specifically declared to be one of the intents hereof that any and all laws authorizing payment of supplemental salaries from court receipts and fees to clerks and other employees of the courts of Civil Appeals, the Supreme Court and the Court of Criminal Appeals, are repealed in so far as they are in conflict with this Act."

The current biennial appropriation for the respective courts of Civil Appeals makes no appropriation for the Deputy Clerk mentioned by you, and there is, therefore, no authority for the appointment and compensation of any Deputy beyond the two Deputies specially mentioned in the appropriation bill and for whom specific salaries have been appropriated.

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We trust that what we have said sufficiently answers your inquiries.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By s/ Ocie Speer
Assistant

OS:MR

APPROVED: CLINICAL COMMITTEE

APPROVED JUN 5, 1941

s/ Grover Sellers

By BWB Chairman

FIRST ASSISTANT ATTORNEY GENERAL